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Supreme Court, U.S.
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No. 99-1106

IN THE

Supreme Court of the United States

LAWRENCE BASTIAN AND ROBERT WEISENBURGER,
Petitioners,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, and UNITED STATES OF AMERICA,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO

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QUESTION PRESENTED

Whether the District Court designated exclusively to supervise the administration and implementation of the Consent Decree between the United States Government and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO ("I.B.T."), properly exercised its jurisdiction under the Consent Decree and All Writs Act, 28 U.S.C. § 1651, by limiting the prosecution of two actions to the District Court where (a) one action named the Independent Review Board ("IRB") (a body created pursuant to the Consent Decree) as a defendant, and (b) both actions challenged the findings of the IRB, and the fairness of proceedings held by the IRB?

The Court of Appeals answered this question in the affirmative.

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Respondent, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (hereinafter "respondent" or "IBT") respectfully submits this brief in opposition to the petition for a writ of certiorari submitted by petitioners, Lawrence Bastian ("Bastian") and Robert Weisenburger ("Weisenburger") (hereinafter referred to collectively as "petitioners").

STATEMENT OF THE CASE

1. A General Overview of the Consent Decree

In 1989, the I.B.T. and the United States Government entered into a consent decree (the "Consent Decree") settling a lawsuit brought by the Government against the I.B.T. under the Racketeer Influence and Corruption Organizations Act ("RICO"), 18 U.S.C. § 1964 (1968). *See United States v. I.B.T.*, Docket No. 88 Civ. 4486 (DNE) (S.D.N.Y.) (C.A. JA 114-45)[1]. The Consent Decree was approved by the United States District Court for the Southern District of New York on March 14, 1989. (C.A. JA 140).

The Consent Decree initially provided for the appointment of three officers, an Investigations Officer, an Independent Administrator as well as an Election Officer. These officers were given the responsibility of carrying out the terms of the Consent Decree, including the responsibility to (a) supervise and monitor certain activities of the I.B.T., (b) conduct investigations within the union, and (c) conduct internal disciplinary and other hearings. (C.A. JA 120-130).

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1. References within this brief to "C.A. JA" relate to the Joint Appendix submitted to the United States Court of Appeals for the Second Circuit.

In the second phase of the Consent Decree, following certification of the 1991 I.B.T. international officer election, an Independent Review Board ("IRB") was established. (C.A. JA 131) The IRB was empowered to supervise the I.B.T. on an ongoing basis, and generally, to make recommendations to the I.B.T. or I.B.T. affiliates. The IRB was delegated the responsibility to monitor responses of the I.B.T. and its affiliates, while retaining ultimate authority to conduct its own hearing in certain circumstances based on the response of the I.B.T. or the I.B.T. affiliate. (C.A. JA 134)[2]

The IRB's authority under the Consent Decree is not limited to allegations involving organized crime. Under Paragraph G(a) and G(b) of the Consent Decree, as well as Rule H of the IRB Rules and Procedures[3], the IRB is authorized to investigate: (1) any allegation of corruption in

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2. Petitioners did not include in their Appendix either the provisions of the Consent Decree establishing the IRB or the IRB Rules, both of which were approved by the United States District Court for the Southern District of New York and the United States Court of Appeals for the Second Circuit. The Consent Decree, in its entirety, is reprinted at pages 114 through 143 of the Court of Appeals' Joint Appendix. The IRB Rules, in their entirety, are officially reported in *United States v. I.B.T.*, 829 F. Supp. 602 (S.D.N.Y. 1993)

3. Following the District Court's approval of the Consent Decree, more specific rules governing the operation of the IRB (the "IRB Rules") were approved, with modifications, by the United States District Court for the Southern District of New York and the United States Court of Appeals for the Second Circuit. *See United States v. I.B.T.*, 803 F. Supp. 761 (S.D.N.Y. 1992), *aff'd in part, rev'd in part*, 998 F.2d 1101 (2d Cir. 1993), *on remand*, 829 F. Supp. 602 (S.D.N.Y. 1993)

I.B.T. affiliates, including bribery, embezzlement, extortion, loan sharking, violations of 29 U.S.C. § 530 of the Landrum Griffin Act, criminal violations of Taft-Hartley or the Hobbs Act, and any act of racketeering activity including the extortion of I.B.T. members' unions democracy right as defined by applicable law, (2) any allegation of domination, control or influence over any I.B.T. affiliate by organized crime or other criminal group, (3) any conduct that in the IRB's view brings reproach upon the Union, and (4) any failure by an I.B.T. entity to cooperate fully with the IRB in any investigation. (C.A. JA 131). The IRB is authorized and empowered to exercise the investigative authority of the I.B.T. General President, as well as its General Secretary-Treasurer. (C.A. JA 131). *See United States v. I.B.T.* (the "IRB Rules Decision"), 829 F. Supp. 602, 605 (S.D.N.Y. 1993); *citing* IRB Rule H(1).

The IRB is also empowered, following investigation, to make recommendations to the I.B.T., including detailed proposed findings, and referrals that (a) an I.B.T. affiliated body be placed into trusteeship and/or (b) disciplinary charges be brought against I.B.T. officers, members, employees, agents and representatives (C.A. JA 132-133). The IRB may also require that an I.B.T. entity resolve a referred matter in a timely manner. (C.A. JA 133) *see also IRB Rules Decision*, 829 F. Supp. at 606 (approving and adopting the procedure set forth in IRB Rule I(1) through I(9)). The IRB is authorized to retain continuing jurisdiction over, and is required to monitor, the I.B.T.'s actions in response to a recommendation that a local union be placed under trusteeship and/or that disciplinary charges be filed against local union officers. *see* Section G of the Consent Decree; *see also* IRB Rule I(5).

Under IRB Rule I(5), the I.B.T. shall, upon referral from the IRB, "promptly undertake whatever action is appropriate under the circumstances to resolve the referred matter . . ." *see IRB Rules Decision*, 829 F. Supp at 606. If the IRB determines that "a matter is not being or has not been pursued and decided by the IBT entity . . . in a lawful, responsible and timely manner," and after giving the I.B.T. an opportunity to take additional actions, the IRB may convene its own hearing on the matter and submit its written decision to the District Court "to be entered as an order of the Court." *see* IRB Rule I(7), I(8) and K(l); *see also IRB Rules Decision*, 829 F. Supp. at 606-07.

The IRB Rules describe the obligations of the I.B.T. and I.B.T. affiliates in responding to an IRB report recommending that disciplinary or trusteeship action be taken against an I.B.T. member or affiliate. The I.B.T. General President is obligated to take action in response to such a report "promptly . . . as provided by the I.B.T. Constitution, applicable law and the — Rules,". In addition, under IRB Rule L, all I.B.T. local unions and affiliates are subject to the authority and jurisdiction of the IRB and must "cooperate fully" in any IRB investigation or enforcement action. *See IRB Rules Decision*, 829 F. Supp. at 606-07.

2. An Overview of the All Writs Order

The parties to the Consent Decree agreed in that Decree that the United States District Court for the Southern District of New York (the "District Court") "has jurisdiction over the subject matter of the action, has personal jurisdiction over the parties, and shall retain jurisdiction over this case until further order of the Court." (C.A. JA 115). The parties also agreed that the District Court retained jurisdiction to "entertain any future applications" by the parties. (C.A. JA 137).

In aid of its jurisdiction to supervise the implementation of the Consent Decree, and in response to numerous lawsuits filed across the country challenging the actions of the officers appointed by the District Court in the pre-1991 phase of the Consent Decree, the District Court issued a permanent injunctive order pursuant to the All Writs Act, 28 U.S.C. § 1651.[4] *see United States v. I.B.T. ("All Writs Order")*, 728 F. Supp. 1032 (S.D.N.Y.), *aff'd*, 907 F.2d 277 (2d Cir. 1990)[5]. That order enjoined all I.B.T. affiliates, including I.B.T. local unions and other entities subordinate to or affiliated with the I.B.T, and any members, officers, representatives; agents and employees of the I.B.T. from

> filing or taking any legal action that challenges, impedes, seeks review of or relief from, or seeks to prevent or delay any act of any of the court officers appointed by the Court pursuant to the Consent Order in this action, in any court or forum in any jurisdiction except this Court.

All Writs Order, 728 F. Supp. at 1039.[6] The purpose of the All Writs Act Order was to (1) "avoid the significant risk of

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4. The All Writs Act provides that federal courts may "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." *see* 28 U.S.C. § 1651(a).

5. In upholding the All Writs Order, the Court of Appeals concluded that the order was a "necessary means of protecting the district court's jurisdiction over the implementation of the Consent Decree. *Id.* 907 F.2d at 280

6. The challenges giving rise to the All Writs Order occurred in cases involving the discipline of union members and officers who resided in jurisdictions that were outside of New York. *All Writs Order*, 728 F. Supp. at 1037-1040, 1042-43.

subjecting the Consent Decree to inconsistent interpretations and the Court Officers to inconsistent judgments"; (2) to avoid "widespread litigation across the country [which] would subvert the reform bogging the Court officers down in duplicative, harassing and perhaps frivolous litigation;" and (3) to further "judicial economy" in preventing "similar issues" to be "litigated multiple times in different districts. *see All Writs Order*, 728 F. Supp. at 1047-48 *see also United States v. I.B.T.*, 907 F.2d at 280.

In a prior case, the Court of Appeals affirmed the application of the All Writs Act Order under circumstances where legal actions filed outside the Southern District of New York "challenge the findings of the IRB or its underlying fairness." *I.B.T. v. Local Union 714*, 109 F.3d 846, 849 (2d Cir. 1997).[7] In reaching its conclusion, the Court of Appeals was careful not to establish "a general jurisdictional rule applicable to any legal action in which a subordinate entity challenges the I.B.T.'s imposition of remedial measures in the wake of a recommendation from the IRB," but to make narrow "holdings based on the facts of a particular lawsuit." *Id.* 109 F.3d at 849.

3. The IBT Constitution

Article VI, Section 5 of the I.B.T. Constitution affords the General President wide ranging power to institute trusteeships

7. More specifically, the Court of Appeals reasoned that the actions and resulting appeals challenged "the propriety of actions" that were taken pursuant to the consent decree. In that case, the locals intended "to contest IRB findings and to question the impartiality of the IRB." The Court of Appeals concluded that "such allegations go to the legitimacy of the reform process established by the consent decree in the underlying RICO action, thereby making these actions the proper concern of the district court that is supervising litigation under the decree." *United States v. I.B.T.*, 109 F.3d at 849.

in order to correct corruption, financial malpractice, or other misfeasance, or to assure performance of collective bargaining agreements "where, in the judgment of the General President, an emergency situation exists within the Local Union". Article VI, Section 5(b) of the I.B.T. Constitution provides, in pertinent part that, the Trustee is authorized to take "full charge of the affairs of the Local." Disciplinary charges may be brought based on, inter alia,

> (1). Violation of any specific provision of the Constitution, Local Union Bylaws or rules of order, or failure to perform any of the duties specified thereunder.
>
> (2). Violation of oath of office or of the oath of loyalty to the Local Union and the International Union.
>
> (3). Breaching a fiduciary obligation owed to any labor organization by any act of embezzlement or conversion of union's funds or property.

See IBT Constitution, Article XIX, Section 7(b) (C.A. JA 351)

Article XIX, Section 11(b) of the I.B.T. Constitution provides that the General President, acting under emergency power, may appoint a representative to conduct a hearing and make a recommendation to the General President.

4. The Placement of Local 320 Under Trusteeship

Pursuant to its authority under the Consent Decree and the I.B.T. Constitution, the IRB conducted an investigation

of Local 320. On May 5, 1995, the IRB issued a 54 page report in which it provided detailed findings, and recommended that the I.B.T. place Local 320 in trusteeship.[8] (C.A. JA 184-236). The IRB's investigation revealed that between 1989 and 1994, Local 320 had collected "over two million dollars each year from members," but that the Union was nonetheless required to obtain loans in excess of $350,000, leaving Local 320 in a precarious financial condition. (C.A. JA 183-247).

In addition, the IRB found that Local 320 "engaged in a variety of practices designed for the personal benefit of [Local 320's] four full time officers," including petitioners, Bastian and Weisenburger. (C.A. JA 183). Such practices included (a) arranging for the sale of cars leased by Local 320 to Local 320 officers, relatives and friends at prices that were less than the fair market value, (b) purchasing magazines for the personal use of Local 320 officers and staff, and (c) using local union funds to pay a massage therapist to provide massages once a month to Local 320 officers and staff. (C.A. JA 183). The I.B.T. General President imposed an emergency trusteeship over the affairs of Local 320, and appointed a temporary trustee. (C.A. JA 248-49). Local 320's officers, including petitioners, Bastian and Weisenburger, resigned on May 3, 1995. (C.A. JA 158 at ¶ V and 252).

A hearing on whether to extend or dissolve the trusteeship was conducted before a three member panel on

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8. At the time of the investigation and report, the members of the IRB were the Honorable Frederick B. Lacey, former U.S. District Court Judge, William Webster, former FBI and CIA Director and former U.S. District Court and Circuit Court of Appeals Judge, and Grant Crandell, General Counsel of the United Mineworkers of America.

July 11, 1995. (C.A. JA 252) Based on the panel's findings and recommendation, and the hearing record, the General President determined to continue the trusteeship "in order to correct financial malpractice, place [Local 320] on a sound financial footing and ensure that the interests of the membership are protected." (C.A. JA 252-253). The General President relied extensively upon the IRB's findings that Local 320 was in a precarious financial condition, and that it had engaged in a variety of practices designed to personally benefit the Local's four full-time officers. (C.A. JA 252-253). In addition, the IBT's General President found that (a) the Trustee had implemented a process to bring financial stability to Local 320, (b) continuation of the trusteeship was necessary to effectively discharge the Union's representational duties and (c) "an overwhelming majority" of Local 320's membership who testified at the hearing supported the trusteeship. (C.A. JA 252-253).

5. The Internal Union Charges

On May 9, 1995, the IRB issued a second report, recommending that the I.B.T. bring charges against Local 320 officers, including petitioners, Weisenburger and Bastian. The IRB concluded that the actions of the Local 320 officers, including the petitioners, had brought reproach upon the I.B.T., constituted a breach of their fiduciary obligations to Local 320 members, and constituted embezzlement of Local 320 funds. (C.A. JA 254-324). The IRB directed the Trustee of Local 320 to hold a hearing and to submit a final report within 60 days of the IRB's recommendation pursuant to Section G, paragraphs (d) and (e) of the Consent Decree. (C.A. JA 254).

In accordance with the IRB's report and recommendation, internal union charges were proffered

against petitioners, Bastian and Weisenburger, as well as the other former officers of Local 320. A hearing on the charges was conducted before a panel of three I.B.T. members (the "hearing panel") on September 12, 1995 and September 13, 1995. (C.A. JA 349). In February of 1996, the hearing panel issued a written report in which it concluded that the petitioners, Bastian and Weisenburger, had breached their fiduciary duties to Local 320. The hearing panel unanimously recommended that the charges be sustained, that the petitioners be suspended from holding office for a period of time, and that they be obligated to repay to the Local Union the monies which had been misappropriated. (C.A. JA 349-83).

Pursuant to the Consent Decree and the I.B.T. Constitution, the General President issued a decision on March 6, 1996, affirming the panel's decision and finding that Local 320's officers, including petitioners Bastian and Weisenburger, had brought reproach on the I.B.T., breached their fiduciary duties, and embezzled monies from Local 320. (C.A. JA 325-32). In particular, the General President concluded that petitioners Bastian and Weisenburger had (a) embezzled Local 320 funds through the sale and purchase of Local 320 leased cars and the purchase of magazine subscriptions delivered to their houses, and (b) violated the Local 320 Bylaws and the International Constitution by accepting monthly Executive Board meeting attendance fees without membership knowledge or approval. (C.A. JA 330-31).

Petitioners Bastian and Weisenburger were fined, suspended from membership in the I.B.T. for one year, and barred from holding I.B.T. office for two years. (C.A. JA 331(b)-332).

6. The Proceedings Below

i. The Constructive Discharge and Defamation Litigation

On May 2, 1997, a year following the I.B.T.'s action, petitioners Bastian and Weisenburger filed a lawsuit in the United States District Court for the District of Minnesota against the IRB, Local 320, the Local 320 Trustee, the I.B.T., I.B.T. General President Ronald Carey, and a benefit fund (hereinafter referred to as the "Constructive Discharge Action"). (C.A. JA 167-70). In summary, the petitioners alleged that the IRB (referred to in the Complaint as the "Board") and the I.B.T. made "false charges of embezzlement and other conduct" against them, resulting in their constructive discharge. In relevant part, the complaint in the Constructive Discharge Action alleged as follows:

> 8. At various times between April 11, 1994 and May 3, 1985, the "International" by and through its President "Carey" and/or the "Board" initiated an investigation into the financial affairs of 320; and the conduct of its various officers, including but not limited to the Plaintiffs herein regarding the management of the financial affairs of "320", through their exercise of the responsibilities of their fiduciary positions. Such allegations included false charges of embezzlement and other conduct that adversely impacted upon their professional stature and ability to continue to serve as union agents and officials.
>
> 9. On or about May 3, 1995, the conduct of the various defendants herein, culminated in the constructive discharge of the Plaintiffs . . .

(C.A. JA 168) (emphasis added). Petitioners sought damages against all of the Defendants, including the IRB, and injunctive relief restoring them to their positions with Local 320. (C.A. JA 169-170)

Additionally, on May 8, 1997, petitioners filed an action in Minnesota State Court against Local 320, the Local 320 Trustee, and the I.B.T. (the "Defamation Action") (the "Defamation Action" and the "Constructive Discharge Action" are collectively referred to as the "Bastian Actions"). (C.A. JA 156-59). This lawsuit alleged, inter alia, that the IRB's proposed recommended charges were "false" and brought in "reckless disregard of the truth," with improper motive constituting "malice," and beyond "the scope of any qualified privilege":

VI.

> On or about May 9, 1995, the International, by and through its Independent Review Board, published "proposed charges" against the plaintiffs herein, and other officers of 320; by dissemination of such charges to Yates as Trustee of 320. Thereafter, Yates, acting on behalf of 320, under the authority of his position as Trustee, initiated and published charges against the Plaintiffs herein which evolved from the proposed charges published by the International.

VII.

> The charges referred to in Paragraph VI hereinabove, alleged that the Plaintiffs "embezzled Local funds" and "breached their

> fiduciary duties" as officers of 320. The charges were brought in reckless disregard of the truth, with improper motive constituting malice, with intent to harm the character and reputation of the Plaintiffs, and beyond the scope of any qualified privilege.
>
> VIII.
>
> The charges brought against the Plaintiffs involving alleged intentional embezzlement and breach of fiduciary duty are defamatory per se, and have a meaning that directly damage the reputation and good character of the Plaintiffs. Said charges are false, and do not have an objective factual basis indicating intentional wrongdoing of conduct designed to defraud 320 of its financial resources.

(C.A. JA 158) (emphasis added).

On May 28, 1997, the I.B.T. removed the Defamation Action to the United States District Court for the District of Minnesota. (C.A. JA 160-64). On June 4, 1997, the petitioners' counsel sent an Amended Complaint ("Amended Complaint") in the Defamation Action to the I.B.T.'s counsel in which the petitioners continued to allege, *inter alia*, that the IRB and the I.B.T. made false charges of embezzlement and breach of fiduciary duty which are "defamatory per se." (C.A. JA 1171-74).

ii. The Order of the United States District Court for the Southern District of New York

On June 11, 1997, the IBT filed a motion with the United States District Court for the Southern District of New York seeking a preliminary injunction, pursuant to the District Court's All Writs Order and opinion, to prohibit the continued prosecution of the Constructive Discharge Action and the Defamation Action anywhere other than in the United States District Court for the Southern District of New York. (C.A. JA 144-145).

Following a hearing and oral argument, during which counsel for the United States formally appeared and supported the I.B.T.'s position (*see* C.A. JA 471-73), the District Court granted a preliminary injunction and prohibited the petitioners from continuing to bring the Constructive Discharge and Defamation lawsuits in any forum other than the District Court. (C.A. JA 475, 477-478). Specifically, the District Court found that both actions challenged the "substance and the findings of IRB reports and, thus, affect the IRB's ability to perform the duties imposed upon it by the Consent Decree" (C.A. JA 476), and held that both lawsuits were within the exclusive jurisdiction of the District Court under the Consent Decree and the All Writs Act. (C.A. JA 478)

iii. The Decision of the Court of Appeals.

On April 9, 1998, the petitioners filed a notice of appeal to the United States Court of Appeals for the Second Circuit (the "Court of Appeals"). The Court of Appeals, in an unpublished summary order, affirmed the decision "for substantially the reasons articulated by the district court."

(Pet. App. A-3). The Court of Appeals concluded that both actions "challenged the 'findings of the IRB' and the 'substance of the IRB reports' ", and therefore, consistent with Second Circuit precedent, were "within the exclusive jurisdiction of the Southern District pursuant to the All Writs Order." (Pet. App. A-4).

The Court noted that the Constructive Discharge Action named the IRB as defendant, which was "alone sufficient to support" an All Writs Act injunction. In addition, the Court noted that the entire premise of the Constructive Discharge Action was that the discharge of the petitioners was based upon the IRB's "false charges" and finding of wrongdoing . . . which was false". (Pet App. A-4) The Court concluded that "[t]he binding litigation of such questions in many fora and jurisdictions would obviously impair the ability of the IRE to function adequately and efficiently under the Consent Decree." (Pet. App. A-4).

With respect to the Defamation Action, the Court of Appeals noted that the action challenged the IRB's "findings" and "the substance of the IRB/I.B.T. discipline process established by the Consent Decree." (Pet. App. A-4). The Court concluded that the Defamation Action fell "squarely within the four corners of the All Writs Order" because its outcome depended upon a "showing that the IRB investigation was improper and the IRB charges were false." (Pet. App. A-4). Finally the Court of Appeals dismissed the petitioners' remaining arguments, noting that "[N]othing in the Consent Decree or the All Writs Order limits the Consent Decree to matters involving organized crime or to matters arising under federal labor laws." (Pet. App. A-4-A-5).

Petitioners' request for a rehearing *en banc* was denied by the Court of Appeals on July 20, 1999. (Pet. App. A-95).

REASONS FOR DENYING THE WRIT

I. THERE IS NO COMPELLING REASON TO GRANT THE PETITION

The potpourri of issues raised by the petitioners do not warrant a grant of the petition.[9]

A. In the first instance, petitioners do not assert a conflict between the decision below and the decision of another court of appeals, or a state court of last resort on the same matter. *C.f.* Sup. Ct. R. 10(a) and 10(b); *see also Braxton v. United States*, 500 U.S. 344, 347 (1991) ("A principal purpose for which [the Court] uses [its] certiorari jurisdiction . . . is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law.") (emphasis added)

B. Petitioners do assert that the decision of the court of appeals "is in contravention" of this Court's decision in *Linn v. Plant Guard Workers of America, Local 114*, 383 U.S. 53 (1966)[10]. Petitioners' analysis is completely off the mark.

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9. Supreme Court Rule 10 states, in relevant part, as follows: "Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons."

10. Petitioners describe *Linn* as holding that a claim of defamation is not preempted by the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a). While in *Linn* this Court held that state court libel actions are not pre-empted by the exclusive

(Cont'd)

Linn is irrelevant here for several reasons. First, the Consent Decree was predicated on RICO jurisdiction, not the Labor Management Relations Act. More important, the Court of Appeals and District Court did not hold that the petitioners' defamation lawsuit was pre-empted by federal law. The District Court and the Court of Appeals merely concluded that the Bastian Actions, because they (a) named the IRB as a defendant and/or (b) challenged the IRB's findings and the fairness of its proceedings, were subject to the exclusive jurisdiction of the District Court supervising the Consent Decree. Petitioners do not suggest how such a decision is in conflict with *Linn* or any other decision of this Court.

Petitioners display a complete misunderstanding of the decision below when they suggest that a failure by this Court to grant certiorari will create a "significant risk that the extra-territorial application of the Consent Decree will be wrongfully extended to preclude the personal claims of other individuals with I.B.T. affiliates around the country." (Pet. at 6-7). Again, the decision below did not impair or preclude the prosecution of the petitioners' claims in any way. Indeed, at the preliminary injunction hearing itself, the District Court offered the petitioners a speedy, if not immediate, trial on the merits of the claims. (Pet. App. A-21). Petitioners declined the District Court's invitation, and in fact, have not sought discovery or otherwise proceeded with their lawsuits other than to proceed with an appeal from the District Court's order.

C. Petitioners assert that the decision below is inconsistent with prior decisions of the same court of appeals on questions

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(Cont'd)
jurisdiction of the National Labor Relations Board, this Court did impose, as a matter of federal labor law, a standard requiring a finding of both malice and actual damages. *Id.* at 64-65.

of jurisdiction. (Pet. at 6). Petitioners' argument is wrong. *see* Point II, *infra* at page 21[1]. Regardless, the inconsistency of a decision of a court of appeals with a prior decision of the same court of appeals is not a basis for this Court to grant a petition for a writ of certiorari. *Wisniewski v. United States*, 353 U.S. 901, 902 (1957) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties."); *cf.* Sup. Ct. R. 10(a).

D. Petitioners assert that the petition should be granted because jurisdiction under the Consent Decree is, or should be, limited to, allegations of organized crime activity. Petitioners are once again mistaken. Over the last ten years, the Court of Appeals has consistently interpreted the reach of the Consent Decree as not being limited to organized crime activity. *see* Point II, *infra* at pages 21-22. In any event, the petitioners do not advance any reason why such an issue would merit review by this Court. This issue is not constitutional in nature nor does it involve a conflict with the decisions of any other court of appeals. In addition, this issue is raised ten years into the jurisprudence of this Consent Decree, does not affect any other case, and raises no alleged important question of federal law.

E. Finally, petitioners assert that the petition should be granted because otherwise, "there is a significant risk that the I.B.T. or the United States will abuse its authority under the Consent Decree and force all of its subordinate officers to litigate statutory claims that involve disciplinary hearings process in the federal courts of New York". (Pet. at 8). This parade of horrors is also based on a complete misreading of the decision below.

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11. Petitioners did not seek *en banc* review by the Court of Appeals on that basis.

The Court of Appeals has correctly delineated, in both this case and prior cases, the limited jurisdiction of the District Court, in regard to the IRB, under the Consent Decree and All Writs Act. The Court of Appeals has made clear that it has not established a "general jurisdictional rule", even in regard to challenges to I.B.T. action taken in response to an IRB recommendation. It rather has followed a careful, case-by-case examination whether a lawsuit presents a "challenge to the findings of the IRB or its underlying fairness." *See Local 714*, 109 F.3d at 849. Petitioners not cite any history of impropriety in the litigation of claims. Thus, there is no compelling reason to grant the petition.

II. THE COURT OF APPEALS PROPERLY AFFIRMED THE DISTRICT COURT'S EXERCISE OF JURISDICTION

The Court of Appeals properly affirmed the District Court's decision to exercise its jurisdiction in issuing an order enjoining the prosecution of the Bastian Actions (the Defamation Action and Constructive Discharge Action) in any court other than the District Court. The decision of the Court of Appeals was consistent with its prior decision that such relief was appropriate in regard to legal actions that "challenge the findings of the IRB or its underlying fairness," and therefore implicate the Consent Decree. (Pet. App. A-4); *citing Local 714*, 109 F.3d at 849. The Court of Appeals' decision was also consistent with the purpose underlying the All Writs Act, 28 U.S.C. § 1651, and the All Writs Act Order, which is to: (1) avoid interpretations of, or judgments concerning the Consent Decree, across the country, (2) avoid widespread litigation bogging down the work of official appointee to carry out the Consent Decree and (3) further "judicial economy" in preventing the litigation of similar

issues multiple times in different districts. *United States v. I.B.T.*, 907 F.2d at 280.

1. The Bastian Actions Implicate the Consent Decree

Petitioners assert that the Constructive Discharge and Defamation actions do not implicate the Consent Decree because the misconduct involved in the trusteeship and disciplinary charges did not involve organized crime or corruption.[12] This argument is absurd. The Consent Decree and the IRB Rules clearly provide the IRB with jurisdiction beyond organized crime. *See* Consent Decree Section G (outlining scope of conduct subject to IRB investigatory authority); *see also IRB Rules Decision*, 829 F. Supp. at 605 (same).

The proper inquiry, therefore, is whether the Bastian Actions challenge the IRB's ability to perform its duties under the Consent Decree, including the investigation of improper activities of union officers other than those which relate to "organized" crime. Indeed, the Court of Appeals has held that the Consent Decree is implicated by, and that the District

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12. The petitioners go as far as to suggest that the absence of La Cosa Nostra influence in a particular instance obviates the application of the Consent Decree notwithstanding the existence of actual criminal activity. Such an argument is ludicrous as it flies in the face of both the purpose and intent of the Consent Decree. *See* Consent Decree Section G; *IRB Rules Decision*, 829 F. Supp. at 605; *see also United States v. I.B.T. ("Wilson, Weber & Dickens")*, 978 F.2d 68 (2d Cir. 1992) (discipline imposed under the consent decree for embezzlement and violation of local union's bylaws); *United States v. I.B.T. ("Local 493 Officers")*, 986 F.2d 15 (2d Cir. 1993) (discipline imposed under the consent decree for embezzlement); *United States v. I.B.T ("Parise")*, 970 F.2d 1132 (2d Cir. 1992) (discipline imposed under the consent decree based upon assault and failure to testify before investigations officer).

Court had exclusive jurisdiction in a case where (a) the misconduct that was investigated by the IRB, and (b) served as the basis for recommending imposition of a trusteeship or disciplinary charges, notwithstanding the fact that it did not involve organized crime.[13] *See e.g. Local Union 714*, 109 F.3d at 849 (in affirming the injunction issued by the district court, the Court of Appeals noted as follows: "Both of the present appeals challenge 'the propriety of actions' taken pursuant to the consent decree. The Locals have demonstrated that they intend to contest IRB findings and to question the impartiality of the IRB. Such allegations go to the legitimacy of the reform process established by the consent decree in the underlying RICO action, thereby making these actions the proper concern of the district court that is supervising litigation under the decree."). A similar case is presented here.

The IRB conducted its investigation of the affairs of Local 320 and made recommendations pursuant to its authority under the Consent Decree and the IRB Rules. Thus, the Consent Decree and the IRB Rules were clearly implicated by the I.B.T. (a) imposing a trusteeship upon the local union, and (b) initiating disciplinary charges against petitioners Bastian and Weisenburger. It is beyond challenge that the allegation in the Constructive Discharge Action that the conduct of the defendants (*i.e.* the IRB and the I.B.T.) resulted in plaintiffs' constructive discharge, implicates both the Consent Decree and the IRB Rules. Through the action,

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13. It is well-established that a trusteeship may be imposed on a local union by the I.B.T. "to eradicate corruption or financial malfeasance . . . to restore democratic procedures or to ensure any other legitimate objects of a subordinate labor organization." *International Brotherhood of Teamsters v. Local Union No. 810*, 19 F.3d 786, 790 (2d Cir. 1994); *citing* 29 U.S.C. § 462.

the petitioners challenge: (1) the factual basis, substance and finding of the IRB's recommendation to impose a trusteeship, and (2) the I.B.T.'s conduct in its attempt to resolve the matter pursuant to the Consent Decree and the IRB Rules.

In addition, petitioners seek (a) monetary damages against all of the defendants, including the IRB, for their alleged losses incurred as a result of the I.B.T. and the IRB's conduct, and (b) full restoration of their pre-trusteeship positions with Local 320, a remedy that directly challenges the imposition of the trusteeship and the decision of the I.B.T.'s General President to uphold the charges. Thus, petitioners are seeking direct review of, and relief from (a) the IRB's investigation, and (b) its recommendation to place Local 320 into trusteeship and to bring charges against the petitioners. Both the District Court and the Court of Appeals have held that "[a]ny action that challenges the ability of the IRB to perform the duties imposed upon it by the Consent Decree clearly implicates the Consent Decree." *International Brotherhood of Teamsters v. Local Union 745*, 938 F. Supp. 1186, 1192 (S.D.N.Y. 1996), *aff'd, Local 714*, 109 F.3d 846 (2d Cir. 1997). In that decision, the Court of Appeals held that "[s]uch allegations go to the legitimacy of the reform process established by the consent decree . . ." and that the District Court properly exercised Consent Decree jurisdiction over a case where the plaintiff challenged the "substance" or "findings" of IRB reports. *Local 714*, 109 F.3d at 849.

Despite petitioners' misleading assertion that "No IRB official has been named as a defendant or sued" (*see* Pet. at 5) and that "[N]o judgments are sought against court appointed members with the IRB" (*see* Pet. at 5), the Constructive Discharge Action actually names as defendants, *inter alia*, both the "International Brotherhood of Teamsters,

its Independent Review Board." (Pet. A-57). The Court of Appeals has noted, in both this case and others, that this fact alone is sufficient to warrant an All Writs Act injunction. (Pet. App. A-4); *see also United States v. I.B.T. ("Erbacci")*, 911 F. Supp. 743, 748-49 (S.D.N.Y.), *aff'd*, 96 F.3d 653 (2d Cir. 1996). Furthermore, the petitioners allege in the action that the IRB and the I.B.T. made "false charges of embezzlement and other conduct" against petitioners, and that they also made "false promises" about a termination of all other investigations and charges . . ." concerning the petitioners. (Pet. A-59). Petitioners seek monetary damages "jointly and severally against the defendants" and request that "plaintiffs be made whole for their losses and restored their full rights with '320'." (Pet. A-61). (Emphasis added).

Similarly, the Defamation Action implicates both the Consent Decree and the IRB Rules because the petitioners allege that the IRB's proposed charges, and the I.B.T.'s charges, were false, constitute defamation, and were brought for improper motives. More specifically, the Petitioners specifically allege that the IRB:

> published "proposed charges" against the plaintiffs by dissemination of such charges to Yates as Trustee of 320. Thereafter, Yates, acting on behalf of 320, under the authority of his position as Trustee, initiated published charges against the Plaintiffs herein which evolved from the proposed charges published by the [IRB].

Pet. App. A-40.

Petitioners allege that the charges were "false", do "not have an objective factual basis," and were brought "in

reckless disregard of the truth with improper motive constituting malice." Petitioners further allege that the charges were published "with intent to harm the character and reputation of the plaintiffs, and beyond the scope *of any qualified privilege.*" (Pet. App. A-40) (emphasis added). Moreover, Petitioners allege in the Amended Complaint that after internal union charges were brought against the petitioners, the defendants, including the respondent, "caused to be disseminated in the Minneapolis and St. Paul news media . . . defamatory statements about the Plaintiffs." (Pet. App. A-54-55).

On their face, these allegations directly implicate the Consent Decree because they (1) challenge the integrity of the IRB's investigative procedure, the authority of the to issue recommendations based upon its investigations, and the authority of the I.B.T. to act upon such recommendations, and (2) seek to have another court determine the scope of any privilege of the IRB and the I.B.T. in meeting their responsibilities under the Consent Decree. Indeed, petitioners admit to this Court that in the Defamation Action, they "allege the falsity of the charges recommended by the IRB as a predicate fact to the allegation of falsity of the media statements about those charges." (*see* Pet. at 4 and 5).

2. The District Court Order is Consistent with, and Effectuates, the All Writ Act Order

The Court of Appeals properly affirmed the District Court's issuance of an injunction under the All Writs Act because continued prosecution of the Bastian Actions elsewhere threaten (1) a significant risk of inconsistent interpretations of the Consent Decree and authority of the court-appointed officers, which would encourage forum

shopping; (2) burdening the IRB with harassing and duplicative litigation across the country; and (3) the inefficiencies of litigating similar issues multiple times in different districts. *See All Writs Order*, 728 F. Supp. at 1047-48; *aff'd*, 907 F.2d at 280.

First, prosecution of the Bastian Actions in any court other than the District Court creates the risk that a federal court in Minnesota will reach a decision in the Bastian Actions based upon an interpretation of the Consent Decree, the authority of the IRB, and any relevant privileges, in a manner inconsistent with the District Court's own interpretation. The Court of Appeals has emphasized that " 'for the IRB to function effectively, it is imperative that a single set of cohesive rulings define such fundamental issues as . . . the propriety of actions taken by officers appointed pursuant to the Consent Decree.' " *Local Union 714*, 109 F.3d at 849; *quoting United States v. I.B.T. ("Erbacci")*, 911 F. Supp. 743, 749 (S.D.N.Y.), *aff'd*, 96 F.3d 653 (2d Cir. 1996). The Court of Appeals' decision to affirm to the order of the District Court ensures that the issues raised by the Bastian Actions will be uniformly addressed, preventing forum shopping.

Second, the Court of Appeals' decision to affirm the District Court's order ensures that the IRB and its members will not have to expend time and funds travelling to, and engaging in litigation in Minnesota, and further, safeguards the IRB from (a) being impeded in its ability to enforce its responsibilities pursuant to the Consent Decree, and (b) being subject to damages or actions across the country. *Erbacci*, 911 F. Supp. at 748-49. Additionally, "the Consent Decree has spawned a tremendous amount of litigation that has required [the District Court] to issue numerous opinions,"

Local Union 745, 938 F. Supp. at 1188, which has resulted in "numerous" appeals, *Local 714*, 109 F.3d at 847. Separate legal actions, including actions involving similar issues raised by the Bastian Actions, may be brought in other courts while the Bastian Actions are pending. Thus, the Court of Appeals' affirmance of the District Court's order prevents challenges in courts other than the District Court that would hinder the I.B.T. and the IRB in implementing their responsibilities pursuant to the Consent Decree and the IRB Rules.

Finally, the Court of Appeals' decision to affirm the District Court's order prevents the litigation of similar issues arising from the same underlying circumstances multiple times. As the District Court has noted, "[b]ecause [it] has overseen the Consent Decree from its inception, [it] has thorough knowledge of the myriad decisions that make up the law of this case." *United States v. I.B.T. ("Darrow")*, 896 F. Supp. 1339, 1345 (S.D.N.Y. 1995). The District Court is the most knowledgeable and efficient in deciding issues relating to the Consent Decree and the IRB Rules. Thus, the Court of Appeals decision to affirm the District Court's order was appropriate to promote judicial economy.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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